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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of
Petition for Waiver Filed by

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Cap Rock Telephone Cooperative, Inc.

AAD 95-139

Concerning the Definition of "Study Area" Contained in the
Part 36 Appendix-Glossary of the Commission's Rules

To: Chief, Common Carrier Bureau

REQUEST FOR REMOVAL OF WAIVER CONDITION CONSISTENT WITH COMMISSION POLICY

Cap Rock Telephone Cooperative, Inc. ("Cap Rock") submits this request for the removal of the "cap" on the Universal Service Fund ("USF") cost allocation support payments established by the Commission's Order adopted April 1, 1996, with respect to Cap Rock's study area.¹ The Order authorized the transfer of local exchange facilities consisting of two exchanges serving approximately 590 access lines into Cap Rock's existing study area. As a condition to the grant of study area waiver, the Order imposed a limitation or "cap" on USF disbursements to the Cap Rock study area of \$480,112 per annum. Consistent with the overarching Commission policy conclusions now established by the Memorandum Opinion and Order on Reconsideration, released September 9, 1999,² Cap Rock requests that its individual USF cap be removed as of

¹ Memorandum Opinion and Order, AAD 95-139, 11 FCC Rcd 11477 (1996) ("Order"). In 1995, Cap Rock was authorized to transfer four exchanges from GTE Southwest Incorporated into Cap Rock's existing study area and received a cap on USF disbursements as a condition to the grant. Memorandum Opinion and Order, AAD 94-109, 10 FCC Rcd 7602 (1995).

² Memorandum Opinion and Order on Reconsideration, AAD Nos. 93-93, 95-72, 95-30, 97-21, 97-23, 97-117, 98-44, 98-53, DA 99-1845, released September 9, 1999 ("Cap Removal Order").

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January 1, 2000.³

Cap Rock expects that many other similarly-situated companies will be seeking removal of their individual USF caps consistent with the Bureau's newly articulated policy conclusions. In order to avoid the administrative burden of repeatedly applying its new policy to a multitude of almost identical requests, Cap Rock respectfully suggests that the Commission simply clarify, on its own motion, its policy by lifting the 57 remaining USF caps.

In the absence of this clarification, Cap Rock respectfully requests expedited action in light of the consistency of this request with the recent policy conclusions and to accommodate the completion of the USF administration prior to January 1, 2000. In support thereof, Cap Rock submits the following:

I. Background

On September 20, 1995, Cap Rock and six other companies filed a joint petition for waiver of the frozen study area boundaries. On April 2, 1996, the FCC released its Order authorizing the removal of exchanges from the Contel and GTE Texas study areas and allowing Cap Rock and the other six companies to consolidate their acquired exchanges within their respective existing Texas study areas. Cap Rock was authorized to transfer two exchanges serving approximately 590 access lines into its existing study area subject to the condition that, absent explicit approval from the Bureau, the annual USF support provided to the existing study area would not exceed the estimated post-upgrade amount of \$480,112, specified in the joint

³ Although this Request references an effective date of January 1, 2000, Cap Rock does not waive its right to raise issues in the future with respect to the applicability of the Commission's policy or rules to prior periods beginning May 8, 1997.

petition.⁴ The National Exchange Carrier Association (“NECA”) was ordered not to distribute USF payments exceeding the limitation.

In the Order, the Bureau also acknowledged appropriately that

new USF rules, implementing new statutory mandates, are likely to alter the distribution of USF support to high-cost areas and require us to revisit these issues following implementation of the 1996 Act.⁵

Although Cap Rock was aware in 1995 that the facilities to be purchased were substandard, and that the Bureau would likely impose a limit on USF recovery, Cap Rock, nevertheless, fully expected that a rational network cost recovery application would be ultimately resolved consistent with the public interest.⁶ Cap Rock believed that rational cost recovery would be possible by removal of the limit or the implementation of a new USF plan, under which the reasonable high costs would be addressed. Although the Cap Rock study area’s 2000 USF receipts, based on data forwarded from the Universal Service Administrative Corporation (“USAC”) to the Commission on October 1, 1999, will likely be less than the \$480,112 cap imposed in the Order, grant of this request will allow Cap Rock to proceed in coming months and years with network upgrades with the understanding that the costs incurred in providing advanced services in rural Texas will be addressed by USF cost recovery.

⁴ Order at ¶ 20.

⁵ Id.

⁶ Cap Rock has deployed remote switch facilities, fiber optic transport equipment, standby generators, and software upgrades, and has installed fiber cable throughout its study area, investing approximately \$780,715 in its network facilities over the past three years.

II. Removal of Cap Rock's Cap is Consistent with Established Commission Policy

On September 9, 1999, the Commission issued its Cap Removal Order, addressing petitions for waiver and reconsideration of the USF conditions applied to 32 study areas. While the Commission noted its policy of monitoring USF impact on carriers involved in study area changes and capping carriers at some estimate of post-upgrade costs, the Commission correctly concluded that limiting the duration of those caps is appropriate and in the public interest.⁷ Accordingly, the Commission granted petitioners' requests to lift the individual caps placed on their high cost loop support on a going-forward basis.⁸ As of January 1, 2000, the high cost loop support for the 32 study areas will then be based upon the average cost of all their lines.

The Commission acknowledged that "caps of unlimited duration may hinder petitioners' incentive and ability to extend service to previously unserved areas, as well as to upgrade service to their existing customers."⁹ The Commission also determined that "limiting the petitioners to the high cost loop support estimated in their original petitions, in perpetuity, is not necessary to accomplish the [Commission's] policies . . ." The Commission "concluded that . . . the individual caps placed on the carriers' high cost loop support have served their purpose . . ."¹⁰ The Commission also recognized correctly that lifting the caps on petitioners' high cost support will increase the affected LECs' incentives and ability to extend service to previously unserved

⁷ Cap Removal Order at ¶ 9.

⁸ Cap Removal Order at ¶ 10.

⁹ Id.

¹⁰ Id.

areas and upgrade their networks.”¹¹

Cap Rock’s conditions are effectively identical to those petitioners addressed in the Cap Removal Order. Therefore, removal of Cap Rock’s individual USF cap is both warranted by, and consistent with, the Commission’s conclusions and policy enunciated in the Cap Removal Order. Like the petitioners addressed in that order, Cap Rock purchased exchanges several years ago and, in conjunction with its request for study area waiver, provided a reasonable estimate of the costs to upgrade the subject facilities for the provision of basic telephone service to existing and new customers. Continuing to limit Cap Rock to the high cost loop support estimated in its original petition is not necessary to accomplish the Commission’s policies. Further, continued application of the individual cap imposed in April of 1996 will hinder Cap Rock’s incentive to continue to invest in advanced services networks and to upgrade existing service, and would jeopardize Cap Rock’s ability to maintain reasonably comparable rates for modern services.

III. Conclusion

Consistent with the Commission’s policy established in its Cap Removal Order, Cap Rock requests that the individual USF cap established by the Commission’s Order be removed as of January 1, 2000. Accordingly, Cap Rock requests that the Commission lift the individual cap placed on its high cost loop support on a going-forward basis so that, as of January 1, 2000, Cap Rock’s high cost loop support payments will be based upon the average cost of all its lines. Adequate USF funding is necessary to allow Cap Rock to continue to maintain and upgrade its

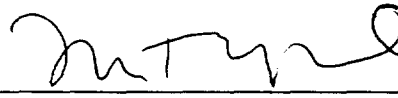
¹¹ Cap Removal Order at ¶ 10. See also Federal-State Joint Board on Universal Service: Promoting Development and Subscribership in Unserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 99-204 (rel. Sept. 3, 1999).

facilities for the provision of universal service to its rural Texas study area. Expedited grant of this request will serve the public interest by ensuring that Cap Rock receives adequate universal service funding to recover the costs of its investment and thereby meet its current and future service requirements.

Respectfully submitted,

Cap Rock Telephone Cooperative, Inc.

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October 22, 1999

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Request for Removal of Waiver Condition Consistent with Commission Policy" of Cap Rock Telephone Cooperative, Inc., was served on this 22nd day of October, 1999 by hand delivery to the following parties:



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